



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-01991  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel  
For Applicant: Pro se

February 3, 2021

**Decision**

Lokey Anderson, Darlene D., Administrative Judge:

**Statement of the Case**

On November 1, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On November 22, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline J, Criminal Conduct; Guideline H, Drug Involvement and Substance Misuse; and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DoD after June 8, 2017.

Applicant answered the SOR on December 30, 2019, and requested a hearing before an administrative judge. The case was assigned to me on May 12, 2020. The Defense Office of Hearings and Appeals issued a notice of hearing on September 29, 2020, and the hearing was convened as scheduled on November 23, 2020. The

Government offered seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant offered no exhibits. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 15, 2020.

### **Findings of Fact**

Applicant is 36 years old. He is married and has two children. He has two years of community college and four years of trade school. He is employed by a defense contractor as a Quality Assurance Technician for Aircraft Production. He is seeking to obtain a security clearance in connection with his employment.

Applicant has a history of criminal conduct, drug abuse, and dishonesty, evidenced by numerous arrests and Felony convictions spanning most of his adult life. (Government Exhibits 3, 4, 5, 6 and 7.) He began working for his current employer in October 2017. (Government Exhibit 1). He has never applied for a security clearance before, and has no military service. Applicant admits to each of the allegations set forth in the SOR.

Applicant graduated from high school in 2002. He went on to school for auto mechanics and briefly worked in the field. He then went to work for a beer distribution warehouse. While employed there, in late August 2006, Applicant was involved in an elaborate robbery scheme where he and his friends stole 1.25 million dollars.

Applicant testified that he and four friends robbed an armored truck. Two of Applicant's friends worked for the armored truck company. Applicant explained that he and his friends got uniforms from the friend who worked for the company. Applicant's role in the heist was that of the get-a-way driver, so that he did not wear a uniform. His two friends went up to the armored truck, knocked on the door, and the doors opened. They went into the vehicle, took a couple of bags of money, and came back to the car. Applicant then drove away. Applicant and his friends were said to have stolen 1.25 million dollars from the heist. After dividing the money between them, Applicant's share of the proceeds was about a quarter of a million dollars. He bought clothes and a cell phone. Applicant was arrested when a private investigator who had been following two of his friends around, who worked for the company, traced the robbery back to the Applicant. Applicant was charged and convicted of Grand Theft: Money, Labor, Property over \$400, a Felony. He was sentenced to two years in state prison. He actually served 13 months before being released in October 2007, as he was credited for pretrial time served. (Tr. pp.19 - 25.)

From October 2007 to June 2009, Applicant worked as a Lube Technician, working on cars, doing oil changes and the like. He was involved in a motorcycle accident and was unemployed until November 2011. During this idle time, Applicant and his friends started using methamphetamines. On at least two separate occasions, Applicant was arrested for Possessions of a Controlled Substance, and Possession of Drug Paraphernalia. On both occasions, Applicant was arrested with friends and

methamphetamine was confiscated. Applicant was actually in the middle of the court ordered drug program for his first offense, when he was arrested for possession of methamphetamines a second time. (Tr. pp. 30-31.) As a result of these convictions, in September 2010, Applicant was placed on an 18-month Deferred Entry of Judgment for Possession of a Controlled Substance and Possession of Drug Paraphernalia. On about September 24, 2010, Applicant failed to appear for a Deferred Entry of Judgment, and a Bench Warrant was issued. On about December 1, 2010, he was sentenced to one year of active formal probation, fined, and ordered to work with a probation officer in a plan for substance abuse counseling and service. Applicant claims that he has been clean and sober since December 2010. (Tr. pp. 25 - 32.)

In November 2010, Applicant was charged and convicted of Possession/Manufacture/Sell of Dangerous Weapon, a Felony. Applicant explained that he was with some friends when they were pulled over, and brass knuckles were found in the Applicant's backpack. He was sentenced to three years formal probation, and one day in county jail. (Tr. pp. 31 - 32.)

A few months later, in January 2011, Applicant was charged and convicted of Forgery, a Felony. Applicant explained that he was cashing checks that he knew to be fraudulent. He got the checks from a friend of a friend. Applicant testified that he would go to the banks and cash them like they were payments to him for providing a service of some kind. Applicant did this at least three times, involving three fraudulent checks. Applicant pled nolo contendere to Second Degree Commercial Burglary and Grand Theft of Personal Property. On or about February 9, 2011, Applicant was sentenced to two years confinement in state prison and was ordered to pay restitution of \$400. Applicant was released early for good behavior, and was given six weeks credit for completing school and receiving certificates in various computer programs. (Tr. pp. 33-35.)

Applicant was hired by his current employer in 2017. On November 1, 2017, he completed a security clearance application. Section 23 of the application asked him, if in the last seven years, had he used any illegal drugs or controlled substances? The Applicant answered, "NO." Applicant failed to disclose his use of methamphetamines from January 2010 to December 2010. (Government Exhibit 1.)

Section 23 of that same application asked the Applicant if in the last seven years, had he been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, handling or sale of any drug or controlled substance? Applicant answered, "NO." Applicant failed to disclose that he was arrested on at least two separate occasions for Possession of Methamphetamines in 2010. (Government Exhibit 1.)

Applicant was not truthful when he answered the questions in Section 23, and he should have answered, "Yes," to both questions on the application. Although Applicant acknowledged his drug use in the police record section of the application, he explained that the reason he did not disclose it in this section is because he did not want the Government to think that he was still using drugs when he was not. (Tr. pp. 40 and 42).

Applicant was not truthful here. Applicant's deliberate attempt to deceive the Government is unacceptable and shows immaturity and poor judgment.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline J, Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgement, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matter of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted or convicted.

The guideline at AG ¶ 31 contains conditions that could mitigate security concerns. Neither of the conditions are applicable.

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement

Applicant’s extensive criminal record demonstrates poor judgment, immaturity and a total disregard for the law. Applicant has a number of Felony convictions and has spent time in state prison on more than one occasion. His misconduct was extreme, outrageous, and inexcusable. Although his last conviction and imprisonment was over ten years ago, he has not established that he is sufficiently reliable and trustworthy to

access classified information. His many violations of the law give rise to serious concerns about his judgment, reliability and trustworthiness, both because of the nature of the offenses, and the circumstances surrounding the offenses. The before-mentioned disqualifying conditions have been established and are not mitigated.

#### **Guideline H: Drug Involvement and Substance Misuse**

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline at AG ¶ 25 contains two conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
  - (1) disassociation from drug-using associates and contacts;
  - (2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

None of the mitigating conditions are applicable. Although his drug-related arrests occurred over ten years ago, and Applicant's states that his drug abuse has stopped, he recently lied about his drug use on his security clearance application. This shows immaturity, and an attempt to hide information from the government. It not clear from the evidence whether he has actually stopped his drug abuse. He has not shown the requisite good judgment, reliability and trustworthiness necessary to be eligible for access to classified information.

### **Guideline E- Personal Conduct**

The security concern for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

There are conditions mitigating security concerns under AG ¶ 17. However, none of them are applicable here.

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant claims that his use and possession of methamphetamines stopped in December of 2010. However, in answering the questions on his security clearance application regarding this drug use, he lied and denied it. He deliberately failed to disclose his drug use on his security clearance application. This raises serious questions about his credibility. Applicant has not demonstrated that he can be trusted. Thus, it is not clear whether he has really stopped illegal drug use. In totality, his conduct still shows a high degree of immaturity and poor judgment. None of the mitigating conditions are applicable here.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines J, H, and E, in my whole-person analysis. Based upon the facts and analysis set forth above, Applicant has failed to provide sufficient evidence to demonstrate that he meets the qualifications for a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Criminal Conduct, Drug Involvement and Substance Misuse, and Personal Conduct security concerns.



### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d.	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a. and 3.b.	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge